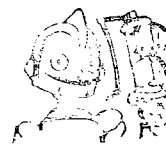




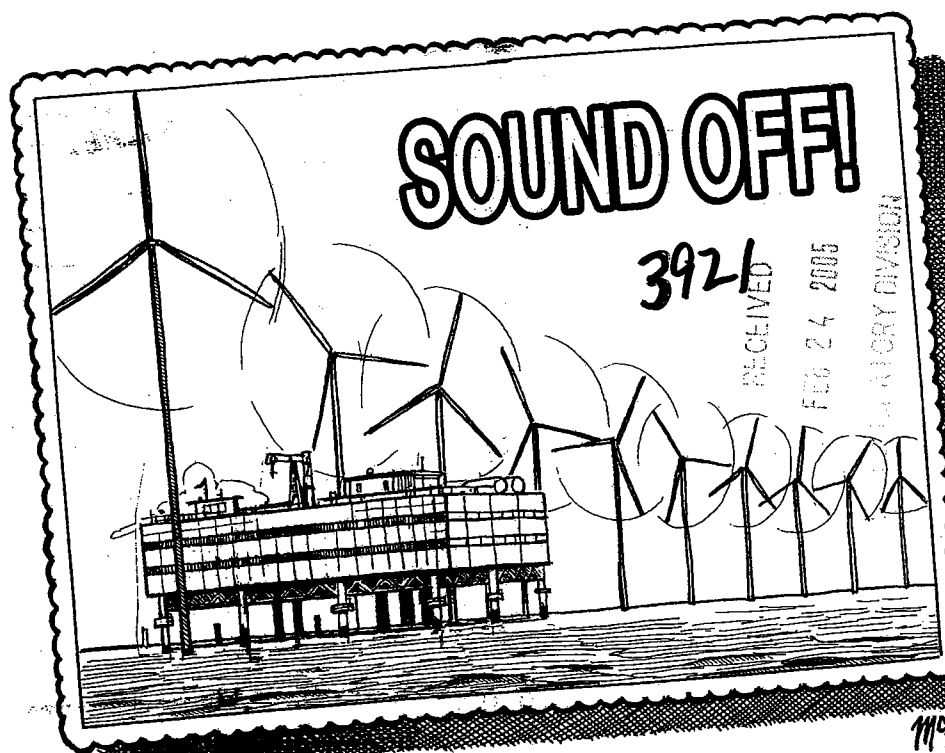
Edward A. Usowicz
11 Marchant Way
West Yarmouth, MA 02673



GREET
NO
FEB



Karen Adams, Project Manager
US Army Corps of Engineers
696 Virginia Road
Concord, MA 01742



COMMENT SHEET

on Draft Environmental Impact Statement (DEIS) for the proposal
for an Offshore Wind Project in Nantucket Sound

3922

Legal Name: Jadene Felina STEVENS

Address: 12 OLDE HOMESTEAD WAY

City EAST HARWICH State MA Zip 02645

Phone Number: (508) 432-6661

Email Address: —

Please state your questions/comments in the space below:

I oppose Cape Wind's industrialization of Nantucket Sound.

No Cape Cod
Wind Farm!

on what grounds:

IT would be an eye sore

Ruin tourism

decrease property values

and most of all

detrimently impact the environment.

Take it elsewhere!

A good concept BUT a HORRIBLE
location which you won't

Because it would be less

expensive for you to set-up, than

if you had to go elsewhere!

MM

261 Wianno Circle
Osterville, MA 02655

3933

February 21, 2005

Colonel Thomas Koning
Corps of Engineers
U.S. Army
696 Virginia Road
Concord, MA 01742

Save Our Sound

Dear Colonel Koning:

I write as a concerned resident of Cape Cod and a taxpayer of the United States.
My strong objections to the installation of skyscraper high windmills in Nantucket Sound are outlined below:

1. The visual pollution which is present during daylight and which at nighttime will resemble the landing field at a major airport. As someone has said: "this is the first step in the industrialization of Cape Cod."
2. The fact that, in spite of overwhelming opposition by the citizens of the Cape, the project is being pushed forward and financed by a \$250,000,000 federal subsidy.
3. The effect on tourism to the Cape and the resultant reduction of employment and tax revenue will be disastrous.
4. Any sane person familiar with the commercial and recreational boating activity on Nantucket Sound must recognize that 100+ windmills will result in countless boating accidents. Even the steamship authority ferries seem to hit each other about every 10 years!

I urge you to cancel and discontinue this project – please don't go forward with this aesthetic and commercial outrage.

Very truly yours,



Walter M. Krauss

PS: One oil spill and Cape Cod and the islands are out of business for 2-3 years!

✓ cc: Ms. Karen Adams,
Cape Wind Energy E&S Project

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FEB 24 2005

U.S. ARMY

3924

February 22, 2005

Karen Kirk Adams
Cape Wind Energy Project
EIS Project Manager
Corps of Engineers, New England District
696 Virginia Road
Concord, MA 01742-2751

Dear Ms. Adams:

I am writing to express my support for the draft Environmental Impact Statement that your office issued several months ago. This project must go forward in a timely matter for all the benefits it will bring to the state and for the incredible precedence it will set.

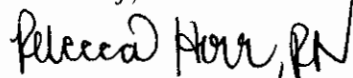
As a healthcare provider and environmentalist I couldn't be more excited about the numerous benefits of the Cape Wind project. I work as a nurse at Massachusetts General Hospital taking care of people who are recovering from open-heart surgery. We know that more heart attacks and asthma attacks happen on high smog days. Our air is in serious need of help, we have the highest rates of asthma in the country! The cape wind project will help cut fossil fuel use and could potentially reduce health care costs by \$50 million annually.

The environmental benefits are multiple including reduction of usage of other fossil fuel plants, reduction of carbon dioxide emissions-a main cause of global warming and no air or water pollution. In addition, economic benefits are good for all Americans and this project has been estimated to save \$25 million in electricity charges annually as well as create numerous, stable jobs.

The draft EIS has already reported that there will be no impacts on aquatic life, minimal impacts on commercial and recreational boating and a relatively small number of birds killed per year.

Please help get this project up and running as quickly as possible. It is absolutely necessary and it would be foolish to turn this project down in light of our deteriorating environment and steadily increasing dependency on fossil fuels.

Sincerely,



Rebecca Horr, RN

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FEB 24 2005
U.S. ARMY CORP OF ENGINEERS
NEW ENGLAND DISTRICT

HALLIWELL

Engineering Associates

3925

February 23, 2005

Ms. Karen Adams
Cape Wind Energy E&S Project
US Army Corps of Engineers
696 Virginia Road
Concord, MA 01742

RE: Response to Cape Wind's DEIS

Dear Ms. Adams,

Thank you for the opportunity to provide the following comments on Cape Wind's proposed wind energy project. My company, Halliwell Engineering Associates, has had significant experience in the development, design and construction of hydroelectric energy projects throughout New England and the United States. As a result, we are familiar with many of the issues and concerns of the developers as well as the stakeholders in this process. Our intent here is not to restate many of the concerns that have been or will be articulated by others, but to hopefully shed light on a new and important issue regarding this project.

During our development of hydroelectric stations throughout the Northeast, we came across a number of hydroelectric dams that had been abandoned, and left in place since the time that their owners stopped operating them profitably. Many of these mills, raceways, diverter dams and primary dams continued to remain in place for decades after their useful life had ended. They no longer were economically feasible, although they continued to divert the waters of the rivers, and negatively impacted the fish and wildlife habitat at their sites. No economic planning or assurances were ever put into place to remove these structures at the time they became economically infeasible, or had outlived their useful service life. As a result, many of them still remain in place today, badly deteriorated and continuing to negatively impact the rivers and streams where they once operated.

The issue that we would care to raise here, from this experience, is that there will also come a day, when these wind turbines will either no longer be economically feasible to operate, or will have outlived their useful service life. This is, in our own opinion, not an issue of **IF**, but of **When**. We would therefore, strongly suggest, that any permitting of public lands for the use of private power development, **carry the requirement of financial guarantees to remove the turbines, their foundations and cabling from this site, at the time they no longer continue to operate.** This guarantee could be provided in the form of a bond or a letter of credit, equal to the amount necessary to restore this site to its original condition. This restoration could occur within the early life of this project, with the financial demise of its owner/operator or it could occur many years from now with the advent of less expensive energy sources. The point is that the economic cost of this restoration must be considered as a project cost, and not one that

3925

befalls the Commonwealth of Massachusetts at the time that the dismantling of this project is required.

This is and will be, a continuing obligation of this project for as long as it is in place, and one that must be provided for in the permitting and financing of its development if this site is to be guaranteed to be restored at the end of operational life of this energy project.

We thank you for the opportunity to provide you with these comments, and look forward to your consideration and response to the same.

Very truly yours,



Jack L. Halliwell, P.E.
President

3926

Robert Inglis
PO box 2011
Nantucket, MA 02584

February 18, 2005

Karen Kirk-Adams
Cape Wind Energy Project EIS Project Manager
Corps of Engineers, New England District
696 Virginia Road
Concord, MA 01742-2751

Ms Kirk-Adams,

I extend thanks to your agency for the extensive review that you have done of the Cape Wind Energy Project. I also thank you for this chance to comment on this proposed Wind Farm, as one that lives in the neighborhood the project. I am a year 'round resident of Nantucket Island.

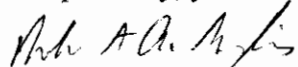
It is my understanding that these United States of America are the largest producers of the polluting greenhouse gases of all of the world's countries. I am proud that in the spirit of free enterprise a business endeavor has been developed to change this balance of polluting energy sources to renewable nonpolluting energy sources. I will be proud to see the Wind Farm in operation in Nantucket Sound.

I understand that our environment is constantly evolving slowly. It is my perception that we usually harm the natural world with our efforts to change it for our human needs. It is obvious to me that this Cape Wind Associates wind farm is an alteration of the natural world. It is not however an unadulterated natural world. Horseshoe Shoal is not the producer of marine life that it was centuries or even decades ago. We cannot allow plunder of Horseshoe Shoal as a natural resource by harvesters of the sea or navigation of the shoal by petroleum driven vessels, without giving the environment something back. We should give the environment a chance to live side by side with our energy producing industry. We should not spew this shoal with toxic oil burning power plant fumes and we should not spill fuel oil on it. When this example of our remaining natural world is cornered between petrochemical air and water pollution, litter washed from shore or thrown from boats, from nutrients washed from land or pumped from boats, and the plunder of commercial fishing, the marine life we want on this shoal does not have a chance to perpetuate. Electricity produced from wind turbines will give Horseshoe Shoal and all of Nantucket Sound a better chance to survive as a viable marine environment than will electricity produced from nuclear, coal, or petroleum sources.

Let us be good neighbors of the natural world and rejoice that a business endeavor can produce significant nonpolluting energy between the energy hungry shores of Nantucket Sound.

Please approve the Cape Wind Associates wind farm in Nantucket Sound.

In celebration of fresh sea breezes, I am respectfully, yours truly.



Robert A. Inglis

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U.S. ARMY CORPS OF ENGINEERS

3927

40 Highland Drive
Centerville, MA 02632
February 21, 2005

Ms. Karen Dirk-Adams
Cape Wind Energy EIS Project
U. S. Corps of Engineers
696 Virginia Road
Concord, MA 01742

Re: Proposed Cape Wind Farm

Dear Ms. Dirk-Adams:

This is an urgent request for the Army Corps of Engineers to seriously consider alternate sites for the wind farm proposed for Nantucket Sound on Cape Cod.

The environmental impact statement is inadequate in many areas, including air and boat navigation safety, pollution threat from oil on the transformer substation, and visual pollution.

I am not a NIMBY, but as the former owner of a bed and breakfast I cannot fathom the long-term economic effects such a project would have on tourism and the many small businesses whose owners' livelihood depends on it. It is doubtful that our thousands of annual visitors would make a return visit to view an industrial site.

Please do not allow the industrialization of Nantucket Sound.

Sincerely,



Pat Donelan

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U.S. ARMY CORPS OF ENGINEERS

3928

ELINOR H. ADAMS
185 Cedar Tree Neck Road
Marstons Mills, MA 02648

February 19, 2005

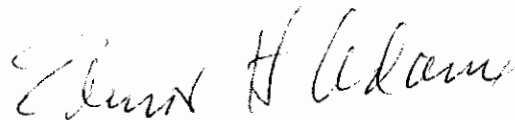
Cape Wind Energy Project
EIS Manager Karen K. Adams
U.S. Army Corps of Engineers
New England District
Regulatory Division
696 Virginia Road
Concord, MA 07142-2751

Dear Ms Adams:

To use Nantucket Sound for a large industrial business, even one that uses wind power, is to take from the world a beautiful, small, irreplaceable place. I have yet to read in all that has been published concerning this project why a land-based site on Cape Cod or elsewhere cannot offer most of what the Sound offers—except that a land-based site will have costs to the developer that the “free” Sound does not. But the Cape Wind Draft Environmental Impact Statement does not begin to cover the costs to the public—costs both in quality of life for Cape Cod residents and their visitors and potentially in pollution, impact on wildlife, and the impact on tourism and the small businesses of Cape Cod that rely on tourism.

Nantucket Sound is a very specific place, not just some anonymous area on the open ocean. And Horseshoe Shoals is a very specific place on Nantucket Sound. Many people leave our shores every day, for most of the year, for these specific places, and have done so for generations. There are some places on this earth that should not be given away to a corporation. I believe this is one of them. Please consider the impact of your decisions concerning this project.

Yours very truly,



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FEB 21 2005

U.S. ARMY CORPS OF ENGINEERS

February 21, 2005

3929

Dear Karen Adams,

I am all for the proposed Wind Farm on Horseshoe Shoals. We need to stop our dependence on foreign oil as soon as possible, and clean, renewable energy like the Wind Farm is the answer. I doubt very highly that tourism will be affected (it hasn't been in other parts of the world). I also refute the idea that a private company has no business building in public waters. Cape Wind is going through exhaustive permitting and revision and has made it clear they take full responsibility for the building and maintenance of the project as well as decommissioning if that should be necessary.

Thank you for your attention,

Randi Allfather

Randi Allfather

2 Traders Lane

Nantucket, MA 02554

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FEB 23 2005
NANTUCKET

3930

To whom this may concern:

I am currently a sophomore at Hamilton College in Clinton New York, and an active member of HEAG, the Hamilton Environmental Action Group. I am writing to express my support for the Cape Wind Farm project. At Hamilton we have an old windmill that was struck by lightning and is currently unusable. We are in the process, however, of getting the windmill up and running again because we recognize the importance of clean energy. Burning fossil fuels creates countless environmental problems, such as global warming, and I believe that windmill use brings us closer to a healthier world. I fully support the Cape Wind Farm project and I know that all of the HEAG members here at school do as well.

Sincerely,



Caitlin Jacobs

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APR 14 2006

CLINTON

3931

Fanny Moran
50 Oenoke Lane
New Canaan, CT 06840
203/972-0799

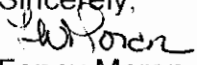
February 21, 2005

The Army Corps. of Engineers:

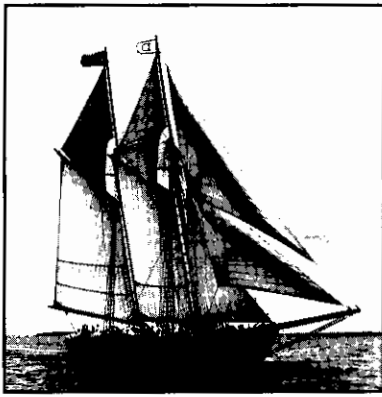
Windmills do not belong in Nantucket Sound for the following reasons.

1. Nantucket Sound is a public waterway, owned by no one. *No private entity has the right to use it for private capitalization.*
2. Nantucket Sound MUST be protected as a marine sanctuary.
3. Due to the numbers of storms that visit the sound each summer, the windmills would pose a danger to navigation – planes, fishing boats, the ferries – all of which create jobs for residents of the Cape and on which the entire Cape relies.
4. Windmills have been known to interfere with radar on which aviation relies.
5. The livelihoods of fishermen would be jeopardized by the windmills.
6. Shore birds, fish and other wildlife would be in peril due to the invasive nature of the structures.
7. The amount of money expended by taxpayers will result in little or no payoff for said taxpayers.

Please do not let this disaster-in-the-making blight our sound.

Sincerely,

Fanny Moran
(Life-long summer resident)

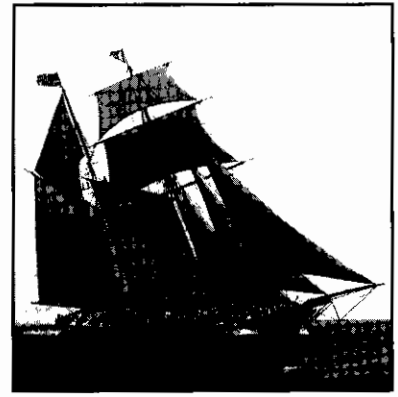
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FEB 24 2005
U.S. ARMY CORPS OF ENGINEERS



The Coastwise Packet Co.
Fleet

Shenandoah
108' Square Topsail Schooner
7000 Sq. Ft. of Sail

Alabama
90' Ex Mobile, Ala. Pilot Schooner
5000 Sq. Ft. of Sail



22 Feb '05

Ms. Karen Adams.
Cape Wind Energy E.I.S. Project
U.S. Army Corps of Engineers
696. Virginia Rd
Concord, Ma. 01742

3932

Dear Ms. Adams.

We are all aware that any E.I.S. is a flawed document (read fraudulent) if it is based on information provided by consultants and engineers that had been paid by the applicant.

This describes the E.I.S. that was produced by Cape Wind -

You should turn it down!

Are you aware that the Beacon Hill Institute released an economic study, which found that the proposed wind plant fails a cost benefit test, and should not be built?

Are you aware that the great majority of Cape and Island residents are against this project?

Sincerely,

Robert S. Douglas

3933

Adams, Karen K NAE

From: Carol Lyall [mamalyall@cape.com]
Sent: Thursday, February 24, 2005 10:31 AM
To: Adams, Karen K NAE
Subject: Windfarm

Dear Ms. Adams,

I attended the hearing held by the Army Corps of Engineers at the Mattakeese school in Yarmouth. I came away with a resounding impression: no one in that packed auditorium was the least bit against developing wind energy. We all recognize its importance. The only difference between the two sides is WHERE to develop it.

Since no one explained why the windfarm HAS to be in Nantucket Sound (other than to please the Capewind Corporation), the question begs why not put it somewhere else?

Certainly this will not be the last windfarm developed. We will need to build lots of them. But before letting the horse out of the barn, we need to have federal and state guidelines drawn up that will identify those areas that should and shouldn't be developed.

There have been several letters to the Cape Cod Times over the past months suggesting windmills be placed along Route 6 which is essentially the backbone of Cape Cod. There are spots, as in Hyannis, where the highway is especially well elevated and the wind blows freely. Not only a sound idea for collection, but also a very inexpensive alternative for running the electricity collected to where it's needed.

In any case, the fact remains that many people for many reasons object to the Nantucket Sound location. (My own are essentially spiritual.) Please don't let the interests of a private corporation dictate where they will build their windmills.

Thank you for your attention.

Sincerely yours,

Carol Lyall

PO Box 24

Cotuit, MA 02635

3934

D. Bruce Langmuir, 9 Bent Brook Road, Sudbury, Massachusetts 01776-2507
Tel: 978-443-8309 - Fax: 978-443-7878 - Cell Phone: 508-733-8914 - Email: db.m.Langmuir@worldnet.att.net

February 23, 2005

3934

Karen Kirk Adams, EIS Project Manager
Cape Wind Energy Project
Army Corps of Engineers, N. E. District
696 Virginia Road
Concord, MA 01742-2751
Tel: 978-318-8338

wind.energy@usace.army.mil

Subject: Endorsement and Technical Concerns of the Cape Wind Project

Dear Ms. Karen Kirk Adams:

First let me say I strongly endorse the Cape Wind Project for Nantucket Sound. I feel the points given that oppose the Project are mostly myths, with perhaps the exception of visual impact. However, I think most would rather see windmill farms than oil drilling platforms, large open coal mining pits, or large fossil fuel coal or oil electric generating plants, all which could negatively affect the environment. Yes I realize some kind of electricity generation is needed to back up windmill farms when there is no wind.

I strongly believe the threat of global warming is an ethical and moral issue. We should all share the responsibility of energy conservation and assisting in developing non-polluting sustainable energy alternatives, which of course includes windmill power electricity generation.

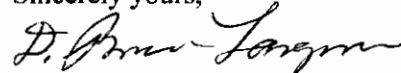
Secondly, my technical concern regards the strength of the wind turbine generators and their towers to withstand potential storm winds and wave/tidal conditions in the future.

I understand the design of the generators and their towers is to withstand winds up to 150 miles per hour. Hurricanes are becoming more frequent and violent and it is difficult to forecast their future. With recent and past history of hurricanes and their potentially higher wind velocities, I feel the generators and their towers should be designed to withstand winds of at least 180 mph or even 200 mph.

I was recently alarmed to learn from several articles that rising sea levels could potentially rise not just up to 3 feet by 2100, but up to 16 feet by 2100. This higher figure was released in an international report in January 2005. (1) While this may seem unrealistically high, global warming now appears to be much worse than previously thought. (2) For these reasons I feel the generators and their towers should withstand potentially higher wave/tidal conditions.

I sincerely hope the Cape Wind Project moves ahead in a timely manner without stalling for political reasons.

Sincerely yours,



D. Bruce Langmuir

Cc: Cape Wind Associates LLC
75 Arlington Street, Suite 704
Boston, MA 02116
Tel: 617-904-3100

(1) *Dramatic change in West Antarctic ice could produce 16ft rise in sea levels* By Michael McCarthy, Environment Editor, February 2, 2005, The Independent (United Kingdom)

(2) *Global warming is 'twice as bad as previously thought'* By Steve Connor, Science Editor, 7 January 2005, The Independent (U.K.).



First Parish of Sudbury

Unitarian Universalist

327 Concord Road, Sudbury, MA 01776

978-443-2043 office@fpsudbury.org

February 22, 2005

Karen Kirk Adams, EIS Project Manager
Cape Wind Energy Project
Army Corps of Engineers, N. E. District
696 Virginia Road
Concord, MA 01742-2751

Subject: Endorsement of the Cape Wind Project

Dear Ms. Karen Kirk Adams:

The *Threat of Global Warming Action Group*, at the First Parish of Sudbury, a Unitarian Universalist church, strongly endorses the Cape Wind Project for Nantucket Sound. At their annual meeting in June 2004, the Unitarian Universalist Association, urged congregations in USA and Canada to take up the issue of Threat of Global Warming as a social action issue. Thus our *Threat of Global Warming Action Group* was formed.

We know the level of CO₂ in the atmosphere is increasing, and we are persuaded by the evidence supporting the position that mankind's use of fossil fuels is responsible for most of this. We accept that an inevitable consequence of CO₂ rise is global warming and that the data that indicate that such a rise is occurring now at an unprecedented rate are evidence of this. We note with concern for the future that even the least alarming of the global-warming scenarios that have been predicted by those that society has trained to do such work are too alarming to let pass without taking whatever remedial action is possible. (The most alarming are too awful to contemplate.) We take the appropriate response to these considerations as they apply to the issue of the Cape Wind Project to be to call for its earliest possible approval and construction. Not only is the Cape Wind Project an important step toward remediation, that can be completed in a few years, it says New England takes the issue seriously enough to override the inevitable negative response to such proposals by local not-in-our-back-yard groups.

We feel the threat of global warming is an urgent moral and ethical problem for all of humanity to work on now. We should thus all share the responsibility of energy conservation and assisting in developing sustainable energy alternatives such as non-polluting windmill power electricity generation.

Sincerely yours,

D. Bruce Langmuir, Chair.

Threat of Global Warming Action Group

Home: 9 Bent Brook Rd., Sudbury, MA 01776

Tel.: 978-443-8309

db.m.Langmuir@worldnet.att.net

Cc: Senator Ted Kennedy, Senator John Kerry,
Governor Mitt Romney, Cape Cod Commission
Massachusetts Environmental Policy Act Office
Attorney General Thomas Reilly

3935



First Parish of Sudbury

Unitarian Universalist

327 Concord Road, Sudbury, MA 01776

978-443-2043 office@fpsudbury.org

February 22, 2005

Karen Kirk Adams, EIS Project Manager
Cape Wind Energy Project
Army Corps of Engineers, N. E. District
696 Virginia Road
Concord, MA 01742-2751

Subject: Endorsement of the Cape Wind Project

Dear Ms. Karen Kirk Adams:

The Faith In Action Committee, at the First Parish of Sudbury, Unitarian Universalist, strongly endorses the Cape Wind Project for Nantucket Sound. The Unitarian Universalist Association, at their annual meeting last June, urged congregations in USA and Canada to take up the issue of Threat of Global Warming as a social action issue. Our Faith In Action Committee has chosen to become involved in this issue.

We feel the threat of global warming is clearly an urgent moral and ethical problem for all of humanity to work on. We should thus all share the responsibility of assisting in developing sustainable energy alternatives such as non-polluting windmill power electricity generation.

Sustainable energy generation will become even more of a necessity as oil and coal become increasingly expensive. It will also lessen the global warming problems. The completion of the Cape Wind Project could reduce global warming greenhouse gases by about 1 million tons per year, assist in reducing respiratory illnesses and deaths in the region, and place a downward pressure on increasing fuel and gasoline prices.

The Army Corps of Engineers' Environmental Impact Statement work has been done very well. This and other studies show the Cape Wind Project impact on the Nantucket Sound region to be low. The benefits far outweigh the impact, and in the long run will reduce negative effects on wildlife. – Thanks for your work.

Sincerely yours,

Judith Deutsch, and
Elizabeth Rust
Co-Chairs, Faith In Action Committee

Cc: Senator Ted Kennedy, Senator John Kerry,
Governor Mitt Romney
Massachusetts Environmental Policy Act Office

3936

JOHN WILLIAM FUTRELL
4600 7th St. N.
Arlington, VA 22203-2011

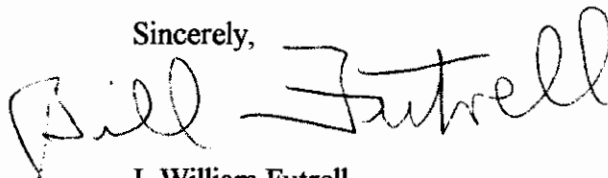
Karen Kirk Adams
Cape Wind Energy Project Manager
Corps of Engineers, New England District
696 Virginia Road
Concord, MA 0142-2751

February 20, 2005

01742-2738
Dear Ms. Adams,

I enclose comments made on behalf of my organization Sustainable Development Law Associates in support of the comments being forwarded by the Alliance to Protect Nantucket Sound on the proposed wind energy project, file no. NAE-3004-338-1. In my correspondence with the Alliance's representatives, I have concentrated on legal issues raised by the project, which has implications far beyond Massachusetts and energy policy. It is the right project at the right time in the wrong place. Thank you for the opportunity to comment and I will be happy to respond to any questions you or your colleagues may have.

Sincerely,



J. William Futrell
President
Sustainable Development Law Associates

COMMENTS ON THE CAPE WIND ENERGY PROJECT DRAFT ENVIRONMENTAL IMPACT STATEMENT

**J. William Futrell
President, Sustainable Development Law Associates**

The draft environmental impact statement (EIS) on the proposal to build a wind energy facility in Nantucket Sound reads more like a prospectus to entice investors than the analysis prepared to inform decision makers that is required by the National Environmental Policy Act (NEPA). It reads like one of the EISs filed in the early 1970s, which were project justifications that downplayed problems. A good environmental impact assessment is an exercise in candor. As the court wrote in *Silva v Lynn*, 482 F 2d 1282,1284 (1st Cir. 1973),

“The "detailed statement" required by § 4332(2)(C) serves at least three purposes. First, it permits the court to ascertain whether the agency has made a good faith effort to take into account the values NEPA seeks to safeguard. To that end it must "explicate fully its course of inquiry, its analysis and its reasoning." --- Second, it serves as an environmental full disclosure law, providing information which Congress thought the public should have concerning the particular environmental costs involved in a project. To that end, it "must be written in language that is understandable to nontechnical minds and yet contain enough scientific reasoning to alert specialists to particular problems within the field of their expertise." --- Finally, and perhaps most substantively, the requirement of a detailed statement helps insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.”

The analysis in the EIS for the Cape Wind Associates application is certainly detailed, but the full disclosure of the impacts of this huge industrial development are obfuscated by extraneous details and a down playing of stubborn problems.

The three primary defects are:

1. It does not inform the decision maker of serious problems and does not take into account the values that NEPA seeks to safeguard
2. It segments the many pending wind projects into separate matters, ignoring the need for preparation of a Programmatic Environmental Impact Statement (PEIS) as required by NEPA regulations and by a string of court decisions.
3. It ignores the alternative of delay until a system for governance of the Outer Continental Shelf (OCS) for wind energy facilities is established as recommended by the 2004 report of the National Commission on Oceans and as proposed in pending legislation.

1. Full disclosure and the values NEPA seeks to safeguard

The EIS does not inform the decision maker of major controversies and does not take into account the values that NEPA seeks to safeguard. Indeed, it undervalues important considerations and sweeps important facts under the rug.

NEPA demands an analysis of socioeconomic factors. The subject of wind energy facilities on the Outer Continental Shelf has been the subject of serious discussion in Congress and the National Oceans Commission. A major concern both in Congress and the presidential commission is insuring that the federal government gets a fair return from any OCS development. The EIS does not discuss the true economic impact of giving away a valuable public resource. Section 5.16 discussing socioeconomic factors is evidence of the flawed nature of the draft EIS. The reader finishes with disbelief. Twenty-six pages of small print contain a hodge podge of unrelated consultants reports. The decision maker relying on this document will learn of housing occupancy in the town of Barnstable, of vessel traffic patterns, but will not be given a clue to the fact that to permit this project would be a major give away of federal property. This deceptive omission undercuts the NEPA command for full disclosure.

The EIS does not discuss the impact that issuing the permit would have on the continuing effort by the State of Massachusetts to designate the area as a Marine Protected Area and of the effect on existing marine sanctuaries in the area. Massachusetts has established five ocean sanctuaries including Cape Cod, Cape Cod Bay, and Cape and Islands. Together, these three preserves make a ring around the Cape Wind Associates proposed wind farm. The Act (M.G.L. c. 132A, #12I-16F. 18: Ocean Sanctuaries Act; 302 CMR 5.00 Ocean Sanctuaries) prohibits structures on the seabed that may alter the ecology or appearance of the ocean. While technically, the wind farm is not in Massachusetts waters and possibly free from the injunction of the Massachusetts statute, there is no denying that it will be visible from the protected areas and its potential impacts must be examined.

Further, the EIS does not discuss the impact that issuing the permit would have on the proposed Marine Protected Area. The Corps of Engineers activities fall within the purview of the presidential Executive Order on Marine Protected Areas (MPAs), 65 Fed. Reg. 34,909, 34,911 (May 32, 2000), that commands agencies to “avoid causing harm to MPAs through federally conducted, approved, or funded activities”. Marine protected areas are defined to include “any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.” The EIS does not discuss the interaction of the Massachusetts sanctuaries with the proposed wind farm in a meaningful manner. The EIS does not alert the decision maker to the significant controversy; its silence undermines the values of NEPA by sweeping these problems under the rug instead of addressing them in a programmatic environmental impact statement that analyzes the cumulative impacts of the project.

2. The need for a Programmatic Environmental Impact Statement

The draft EIS forthrightly recognizes that the proposed action is the first of its kind in the United States, stating at page 2-2, " In December 2001, the USACE determined that an EIS is required for this proposed project, the first proposal of its kind in the United States." It is hardly the last. A single company, Winergy LLC has already proposed 17 wind farms in the waters of the northeastern United States. The Corps will soon be processing a string of applications similar to Cape Wind's proposal. The EIS is misleading because it does not discuss this proposal in the context of the plans for a series of wind power farms along the Eastern seaboard of the United States. The specific proposal for the Cape Wind Associates permit should be evaluated in the context of this massive development.

This is a classic example of a string of developments that call for a comprehensive or programmatic environmental impact statement. The Corps failure to file such a programmatic statement is even stranger in light of its past records with courts that have compelled the Corps to go beyond a permit evaluation and embark on a full scale PEIS especially when authorizing new activities on the outer continental shelf. In *National Wildlife Federation v Benn*, 41 F.Supp. 1234,1250 (S.D. N.Y. 1980), the plaintiffs contended that the Corps had acted arbitrarily and in contravention of NEPA by treating individual ocean dumping projects as "isolated single-shot ventures" and not preparing a programmatic or comprehensive EIS covering the entire Mud Dump Site. The court agreed, writing:

"The importance of a programmatic EIS has frequently been recognized and emphasized by the Second Circuit. The purposes of NEPA are frustrated when consideration of alternatives and collateral effects is unreasonably constricted. This can result if proposed agency actions are evaluated in artificial isolation from one another. Accordingly, an agency is required to consider the full implications of each decision in light of other potential developments in the area, and to prepare a comprehensive impact statement if several projects are significantly interdependent. --- A balance must sometimes be struck between the importance of going forward with a project presently under consideration and the danger of improperly "piggybacking" several related projects by justifying each of them on the assumption that the others are to be constructed, only to discover later that the overall combination of the projects may do more harm than good."

A major concern motivating the preparation of a PEIS is the cumulative impacts, unforeseen with the construction of one facility that can result from the interaction of many projects.

In *Friends of the Earth v Corps of Engineers*, 109 F. Supp. 2d 30,41 (D.D.C. 2000), the court held that the Corps had violated NEPA when it did not analyze the cumulative impacts entailed in constructing a string of casinos along the Mississippi Gulf Coast in environmental analyses that sought to consider each application standing alone. The court explained,

"Cumulative impacts" are those impacts "that result [] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency . . . or persons undertakes such other actions." 40 C.F.R. §§ 1508.7. "Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." *Id.* When actions "will have cumulative or synergistic environmental impact upon a region" and "are pending concurrently" before an agency, "their environmental consequences must be considered together." --- The purpose of this requirement is to prevent agencies from dividing one project into multiple individual actions 'each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.'"

Corps regulations acknowledge the need for the programmatic environmental impact statement in the appropriate case:

"(c) Tiering. Tiering is discussed in 40 CFR 1502.20 and 1508.28 and should be used in appropriate cases. The initial broad or programmatic EIS must present sufficient information regarding overall impacts of the proposed action so that the decision-makers can make a reasoned judgment on the merits of the action at the present stage of planning or development and exclude from consideration issues already decided or not ready for decision. The initial broad EIS should also identify data gaps and discuss future plans to supplement the data and prepare and circulate site specific EISs or EAs as appropriate. 33 CFR 230.13."

Other federal agencies are considering wind power developments including the Bureau of Land Management, which filed a draft Programmatic Environmental Impact Statement in September 2004. It explained its decision,

"The BLM has determined that the establishment of a Wind Energy Development Program would be a major federal action as defined by the National Environmental Policy Act of 1969 (NEPA). Thus, the BLM has prepared this draft programmatic environmental impact statement (PEIS). The objectives of the draft PEIS are to (1) assess the environmental, social, and economic impacts associated with wind energy development on BLM-administered land, and (2) evaluate a number of alternatives to address the question of whether the proposed action presents the best management approach for the BLM to adopt, in terms of mitigating potential impacts and facilitating wind energy development." P. 1

The draft BLM PEIS acknowledges that wind energy projects although recognized as a "green" development are not without their own problems specifically when sited in undesirable locations. The BLM in dealing with future wind power projects has a range of land use controls available in federal statutes that govern the public lands. A comparison of the Cape Wind Associates and the BLM PEIS highlight the regulatory

void on the OCS, a regulatory void that makes protection of the public interest impossible.

The Corps should follow the example of the British government which when faced with proposals for wind energy projects drafted a programmatic wind energy policy rather than react to isolated projects proposed in a scattershot fashion. This allowed the British government to consider cumulative impacts and comparable advantages in different sites.

The same rationale should guide the Corps to prepare a PEIS. The conjunction of a slew of proposed wind power developments with the launching of pioneer energy developments on the outer continental shelf should have been a red light warning the Corps that a programmatic statement was in order. Their failure to recognize that need rises to the level of arbitrariness and capriciousness in light of the examples set by the Bureau of Land Management and the British government.

3. The alternative for delay until a system of OCS governance is in place

The EIS is defective because it fails to discuss the alternative of delay until a system of governance for wind power developments on the outer continental shelf is established. It does not inform the decision maker of the extensive public dialogue on the future of ocean governance and the potential give away of public lands on the outer continental shelf. The National Commission on Oceans specifically considered the question of wind power and other renewable energy projects on the OCS. The final report states,

“ In addition to oil and gas, other offshore energy sources are being explored. The National Ocean Council, Working with the U.S. Department of Energy and others, should determine whether methane hydrates can contribute significantly to meeting the nation’s long-term energy needs and, if so, what level of investment in Research and development is warranted. Renewable energy sources should also be considered as part of a Coordinated offshore management regime. Congress, with input from the NOC, should enact legislation to streamline the licensing of renewable energy facilities in U.S. waters, relying on an open, transparent process that accounts for state, local, and public concerns. The legislation should include the principle that the oceans are a public resource and that the U.S. Treasury should receive a fair return from any use of that resource.” Executive Summary, P.lx

Congress has taken note of this lacuna and legislation to construct a system for governance of the OCS for wind energy facilities was proposed as part of the comprehensive energy bill. See H.R. 5156 107th Congress which seeks “ to protect the economic and land use interests of the Federal government in management of the Outer Continental Shelf for energy-related and other purposes”.

H.R. 793 introduced in the 108th Congress states,

“a) PURPOSES- The purposes of this section are as follows:

- (1) To protect the economic and land use interests of the Federal Government in the management of the Outer Continental Shelf for energy-related and certain other purposes.
- (2) To provide an administrative framework for the oversight and management of energy-related activities on the Outer Continental Shelf, consistent with other applicable laws.
- (3) To expedite projects to increase the production, transmission, or conservation of energy on the Outer Continental Shelf.
- (4) To provide for interagency coordination in the siting and permitting of energy-related activities on the Outer Continental Shelf.
- (5) To ensure that energy-related activities on the Outer Continental Shelf are conducted in a manner that provides for safety, protection of the environment, prevention of waste, conservation of natural resources, the protection of correlative rights, and protection of national security interests.”

The draft EIS catches none of the plural interests at play in the Congressional deliberations on the wind energy bill including the option of not developing a program until deepwater wind technology available, an option that would open many potential existing sites far removed from Marine Protected Areas.

The draft EIS alternatives section in section 3.3 presents a stark choice between issuing the permit to build the Cape Wind Associates project now or to deny the permit, dooming New Englanders to freeze in the dark. An obvious alternative is to delay the project until a system for governance for ocean wind farms is in place. This alternatives section presents a false dichotomy, a Hobson’s choice, the thing offered or nothing.

The alternatives section of any EIS is the heart of the document. The classic case on the presentation of alternatives in an impact statement is *Natural Resources Defense Council v Morton*, 458 F. 2nd 827,835 (D.C. Cir. 1972) in which the court upheld a preliminary injunction halting bids for leases for oil and gas on the outer continental shelf lands off Louisiana because of a failure to discuss alternatives outside the Department of Interior’s jurisdiction. The court wrote,

“ While the Department of Interior does not have the authority to eliminate or reduce oil import quotas, such action is within the purview of both Congress and the President, to whom the impact statement goes. The impact statement is not only for the exposition of the thinking of the agency, but also for the guidance of these ultimate decision makers – .”

While the Corps by itself does not have the power to establish a governance system for wind power on the outer continental shelf that will guard public rights, Congress does. Not to discuss the alternative of delay while legislation to establish such a system is pending ignores an important alternative.

The failure to consider a viable alternative renders the alternative section of an EIS invalid. See *Surfrider Foundation v Dalton*, 989 F. Supp. 1309,1326 (S. D. Cal. 1998), aff'd on the basis of the District court opinion, sub nom. *San Diego Chapter of Surfrider Foundation v Dalton*, 157 F. 3rd. 1057 (9th Cir. 1999), in which the court wrote,

“ --- when an agency has unreasonably decided not to study a potentially viable alternative, then a court must assume that the agency was unable to adequately incorporate environmental values into its decisionmaking process. The purpose of NEPA cannot be achieved in such a void.”

The Corps Hobson's choice of grant the permit or to deny it now and forever ignores the alternative of delay that allows wise planning.

Conclusion

The Corps of Engineers should withdraw the Cape Wind Energy Project Draft EIS and prepare a draft programmatic environmental impact statement that will take a hard look at the difficult issues the Corps chose to skirt in this draft. In its revision to the Draft EIS the Corps should acknowledge that this is no ordinary application. The Governor and other Massachusetts officials have raised vociferous objections that are not dealt with in the Draft, which focuses on the applicant's issues. This is reminiscent of the Corps response in the Westway litigation, *Sierra Club v United States Army Corps of Engineers*, 701 F. 2d 1011 (1983), in which the Corps ignored issues raised by commentators. The repackaging of consultants reports raises the admonition of *Greene County Planning Board v Federal Power Commission*, 455 F. 2d 412 2d Cir. cert. denied 409 U.S. 489 (1972) that NEPA does not permit the federal agency to rubber stamp consultants reports. Merely responding to the voluminous and passionate comments of the elected representatives of the state of Massachusetts with the cosmetic insertion of paragraphs on state concerns will not suffice to provide the analysis that will reveal to the ultimate decision makers how wind energy developments can be conducted on the outer continental shelf in accord with the values that the National Environmental Policy Act safeguards.